IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 1913 OF 2007

Vishwanath Chowdhary & Anr. .. ... Petitioners.

Versus

Ms.Fatema Salehbhai Sura..... ... Respondent.

Mr. G.S.Godbole for the Petitioner.
Mr. A.N.Nasikwalla for the Respondent.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard Mr. G. S. Godbole, learned Counsel for the petitioners.

2. The respondent has obtained the decree of eviction as per the judgment and order dated 18th February, 2005 passed by the Small Causes Court at Mumbai in R.A.E. Suit No. 894/1580 of 1999 and the same decree has been challenged in Appeal no.268 of 2005 by the petitioners.

3. During the pendency of the appeal, the petitioners

filed application at Exh.5 before the lower appellate court and prayed for stay of the execution of the decree which application has been allowed by the lower appellate court vide its judgment and order dated 20th November, 2006 but on condition that the appellants shall deposit and/or pay at the rate of Rs.15,000/- per month as rent till further orders.

4. Mr. Godbole, learned Counsel, submitted that even if the condition of deposit was imposed by the lower appellate court by referring to the decision in M/s. Atma Ram Properties (P) Ltd. v/s M/s. Federal Motors Pvt. Ltd., (2005) 1 SCC 705, the amount of Rs.15,0000/- per month is not justified and it is exorbitant, more so when the suit premises are in a very dilapidated condition and the Corporation has issued notices from time to time for demolition of the entire building.

5. Admittedly, the suit premises are commercial premises and admeasure 320 sq.ft. The fact remains that as of now the petitioners are carrying out their business from the suit premises and the rental consideration directed by the lower appellate court

comes to about Rs.50/- per sq.ft. which does not appear to be unreasonable by way of interlocutory order to stay the execution of the decree and in any case the petitioners have the option to deposit the said amount in the lower appellate court.

6. I am satisfied that the interlocutory order impugned does not call for any interference under Article 227 of the Constitution save and except to direct the pending appeal to be heard and decided expeditiously and that deposited amount will not be allowed to be withdrawn till the appeal is decided.

7. In the circumstances, writ petition is rejected. However, it is directed that Appeal No. 268 of 2005 be heard and decided on its own merits and as expeditiously as possible and preferably by 31st December, 2007 and the amount deposited as per the impugned order shall not be allowed to be withdrawn till the appeal is decided, if such a deposit is made within a period of six weeks from today.

(B. H. MARLAPALLE, J.)